

AMENDED IN SENATE JULY 1, 2010
AMENDED IN SENATE AUGUST 17, 2009
AMENDED IN SENATE JULY 13, 2009
AMENDED IN ASSEMBLY JUNE 1, 2009
AMENDED IN ASSEMBLY MAY 5, 2009
AMENDED IN ASSEMBLY APRIL 20, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 413

Introduced by Assembly Member Fuentes

February 23, 2009

An act to amend Sections 327, 382, 739.1, and 747 of, and to add Sections 365.1, 739.9, 745, and 748 to, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy. An act to add Section 17052 to the Business and Professions Code, relating to unfair competition, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 413, as amended, Fuentes. ~~Energy rates.~~ *Unfair competition.*

Existing law defines unfair competition and makes unlawful specified business practices intended to injure competitors or destroy competition, and specifies criminal penalties and civil remedies for violations, including injunctive relief and damages.

This bill would make it unlawful for any person to develop, produce, or manufacture any article or product, as defined, using stolen or misappropriated property, including, but not limited to, unlicensed computer software, when the article or product is in competition with an article or product that is lawfully developed, produced, and manufactured. The bill would make violations of its provisions subject to existing criminal penalties and civil remedies. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

~~(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.~~

~~This bill would prohibit the commission, prior to January 1, 2014, from requiring or permitting an electrical corporation to employ mandatory or default time-variant pricing, as defined, for residential customers, but would authorize the commission to authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing and to participate in other demand response programs. The bill, commencing January 1, 2014, would permit the commission to approve an electrical corporation's use of time-variant pricing if residential customers have the option to not receive service pursuant to time-variant pricing and incur no additional charge, as specified, as a result of the exercise of that option.~~

~~(2) Existing law requires the commission to establish a program of assistance to low-income electric and gas customers, referred to as the California Alternate Rates for Energy or CARE program, and prohibits the cost to be borne solely by any single class of customer.~~

~~This bill would require the commission to establish the CARE program to provide assistance to low-income electric and gas customers with annual household incomes that are no greater than 200% of the~~

federal poverty guideline levels, and require that the cost of the program not be borne solely by any single class of customer. The bill would require, for an electrical corporation or public utility that is both an electrical corporation and a gas corporation, that the cost of the program be recovered on an equal cents per kilowatthour or per-therm basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008.

~~(3) Existing law relative to electrical restructuring requires that the electrical corporations and gas corporations that participate in the CARE program administer low-income energy efficiency and rate assistance programs described in specified statutes, and undertake certain actions in administering specified energy efficiency and weatherization programs.~~

~~This bill would require that electrical corporations, in administering the specified energy efficiency and weatherization programs, target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage at the dwelling units and develop programs that specifically target nonprofit affordable housing providers, including weatherization of existing dwelling units and replacement of inefficient appliances. The bill would require the commission, by not later than December 31, 2020, to ensure that all eligible low-income electricity and gas customers are given the opportunity to participate in low-income energy efficiency programs, including customers occupying apartment houses or similar multiunit residential structures, and would require the commission and electrical corporations and gas corporations to expend all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs and to obtain additional federal funding to support actions undertaken pursuant to this requirement.~~

~~(4) Existing law relative to electrical restructuring requires the commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers.~~

~~Existing law requires the commission to designate a baseline quantity of electricity and gas necessary for a significant portion of the reasonable energy needs of the average residential customer, and requires that electrical and gas corporations file rates and charges, to be approved by the commission, providing baseline rates and requires the commission, in establishing baseline rates, to avoid excessive rate increases for residential customers.~~

~~Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department’s acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law provides that the department is entitled to recover certain expenses resulting from its purchases and sales of electricity and authorizes the commission to enter into an agreement with the department relative to cost recovery. That law prohibits the commission from increasing the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities, until the department has recovered the costs of electricity it procured for electrical corporation retail end-use customers. That law also suspends the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law.~~

~~This bill would delete the prohibition that the commission not increase the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities. The bill would authorize the commission, until January 1, 2019, to increase the rates charged residential customers for electricity usage up to 130% of the baseline quantities by the annual percentage change in the Consumer Price Index from the prior year plus 1%, but not less than 3% and not more than 5% per year. This authorization would be subject to the limitation that rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, not exceed 90% of the system average rate, as defined. The bill would authorize the commission to increase the rates for participants in the CARE program, subject to certain limitations. The bill would delete the existing suspension of direct transactions in the Water Code that was adopted during the energy crisis of 2000–01, and would instead require the commission to authorize direct transactions subject to a phase-in schedule of not less than 3 years and not more than 5 years, and subject a maximum allowable total kilowatthours annual limit established, as specified, for each electrical corporation. The bill would~~

~~continue the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions.~~

~~(5) Existing law requires the commission to prepare and submit to the Governor and the Legislature a written report on an annual basis before February 1 of each year on the costs of programs and activities conducted by an electrical corporation or gas corporation that has more than a specified number of customers in California.~~

~~This bill would change the submission date to April 1 of each year, and would also require a separate report, due May 1 and annually thereafter, to contain the commission's recommendations for actions that can be undertaken to limit utility costs and rate increases, consistent with the state's energy and environmental goals. The bill would require the commission to annually require electrical and gas corporations that have more than a specified number of customers in California to study and report to the commission on measures that these corporations recommend be undertaken to limit utility costs and rate increases.~~

~~(6) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.~~

~~Because certain of the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17052 is added to the Business and
- 2 Professions Code, to read:
- 3 17052. (a) It is unlawful for any person to develop, produce,
- 4 or manufacture any article or product using any stolen or
- 5 misappropriated property, including, but not limited to, unlicensed

1 computer software, in competition with an article or product that
2 is lawfully developed, produced, or manufactured.

3 (b) A violation of subdivision (a) shall constitute unfair
4 competition within the meaning of Section 17200. Each article or
5 product described in subdivision (a) shall constitute a separate
6 violation.

7 (c) (1) Remedies and penalties for a violation of this section
8 are cumulative.

9 (2) An action for injunction and damages pursuant to Section
10 17070 for a violation of this section may be brought by the Attorney
11 General in addition to the other persons authorized to bring an
12 action under that section.

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

22 SEC. 3. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or safety within
24 the meaning of Article IV of the Constitution and shall go into
25 immediate effect. The facts constituting the necessity are:

26 In order to address the severe and escalating problem of the use
27 of stolen or misappropriated property in producing goods and
28 services resulting in unfair competition against legitimate and law
29 abiding companies doing business in this state, resulting in a dire
30 impact on jobs and revenues, it is necessary that this act take effect
31 immediately.

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34 **All matter omitted in this version of the bill**
35 **appears in the bill as amended in the**
36 **Senate August 17, 2009. (JR11)**
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